

NOV 14 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

KATHRYN J. HANES; MADONNA A.
HANES; KIANNA HANES,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 04-57141

D.C. No. CV-02-01092-JTM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Kathryn, Madonna, and Kianna Hanes (“the Haneses”) appeal from the district court’s order denying their “Motion to Fashion Appropriate Remedy and for Discovery” in their action against individual federal agents and the United

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

States arising from the execution of a search warrant. Because we construe the Haneses' motion as brought under Fed. R. Civ. P. 60(b), we review for abuse of discretion. *De Saracho v. Custom Food Machinery, Inc.*, 206 F.3d 874, 880 (9th Cir. 2000).

The Haneses' motion sought to "reopen" their case after they had stipulated to its dismissal pending the outcome of two appeals. Although the stipulation allowed the Haneses to refile their complaint if they prevailed on either appeal, both appeals were dismissed for lack of subject matter jurisdiction. The district court did not abuse its discretion in concluding that the Haneses did not prevail on either appeal and that the stipulation was valid. *See LeFarge Conseils et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1338 (9th Cir. 1986). The Haneses cite no authority for the proposition that, because one judge commented during oral argument that the warrants were "dead bang losers," they prevailed on the merits of their appeal, notwithstanding the fact that this court dismissed the appeal without reaching the merits.

Their arguments regarding the validity of the stipulation are equally without merit. They are all mere assertions unsupported by any citation to evidence in the record.

AFFIRMED.